

SECTION 12. GLOSSARY OF MUNICIPAL GOVERNMENT TERMS

In order to provide in handy reference form the meanings of some of the words and phrases which are most often used in municipal law, we have prepared the following glossary.

Abuse of discretion. The legal basis for a judicial overturning of a Council decision. It is established in one of three ways: (1) Council failure to proceed in a manner required by law; (2) Council fails to support its decision by findings where required; or (3) Council findings are not supported by substantial evidence.

Adjourn, adjournment. Action terminating and closing a meeting entirely. If another and subsequent meeting has been previously set to take place (or is set to take place with the motion to adjourn), the adjournment may act to continue business to the subsequent meeting.

Affected taxing entity: An entity which levied property taxes within a redevelopment project area before the redevelopment plan was adopted.

Affordable Housing has the meaning set forth at Cal. H. & S. C. § 50052.5.

Agreement. A coming together or meeting of the minds creating an obligation respecting some property right or benefit, or the performance of an act.

Annexation. The completion of an administrative process that brings about the attaching, joining or adding of an area of land (usually contiguous) to a City's existing territory.

Answer. A pleading filed with a court by which the defendant resists a complaint by denying facts, alleging facts, and raising defenses and immunities to the matters or claims alleged.

Assessment. In a general sense, the process of ascertaining and adjusting the costs respectively to be contributed by several persons towards a common beneficial object (such as a park, street, landscaping service) according to the benefit received or burden created.

Attorney Work Product, work product. "General" work product is the work or result of efforts by an attorney (including those persons engaged by the attorney) on behalf of a client on a matter, whether in litigation or not. "Classic" work product is any writing that reflects an attorney's impression, conclusions, opinions, or legal research or theories. General work product is conditionally privileged, while classic work product is absolutely privileged. The attorney by law is regarded as the holder of the work product.

Attorney Client, Attorney-Client Communication. Information transmitted between a client and his or her lawyer. Every communication in the course of the attorney client

relationship in confidence. The communication is made by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interests of the client in the consultation, or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted. It includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. The communication is confidential even if transmitted by fax, telephone, or other electronic means.

Blight: For redevelopment purposes, blight is established by certain physical and economic conditions within the survey area for which the plan is adopted, and by meeting the urbanization requirement¹⁵².

Charter. A city's "organic" law. The charter is sometimes called the city's constitution. It may be amended only by a vote of the people.

Chartered City. A city existing by virtue of, and exercising home rule powers through, a charter. Charter cities have greater and broader powers as to municipal affairs than do non-charter cities (known as "general law" cities).

City. An incorporated town or municipality. A municipal corporation deriving its powers from the state. In California, there are two types: general law city and charter city. The City of Fresno is a charter city.

Claim, tort claim, claim for damages. A writing demanding payment of monetary compensation or reimbursement, for an act, omission or occurrence by a public entity or its employee. Claims must contain the information required by law, and must be presented within the time and in the manner provided by law (in writing and sufficient to apprise the public entity of the nature of the claim).

Code. A compilation of existing ordinances systematically arranged into chapters, subheads, table of contents, indices, and revisions. It serves to clarify and make a complete body of laws designed to regulate completely the subjects to which they relate. The City of Fresno has compiled its codified ordinances in the Fresno Municipal Code.

Codification. The process of collecting and arranging the laws or ordinances of a governmental body into a code. (See Code.)

Complaint. The (first) document initiating a civil action and filed with a court. The document is a pleading wherein a plaintiff alleges facts entitling him or her to some relief, which is typically money damages, an injunction, a declaration of rights, cancellation of a contract or other document, etc.

Condemnation. (See eminent domain and inverse condemnation.)

¹⁵² Health & Safety Code § 33031.

Cross-complaint. A complaint (see herein) brought by a defendant against a plaintiff (see herein) or against a third party. It concerns matters reasonably related to questions, facts, or matters raised in the initial complaint, and seeks contribution or indemnification in the defense of the initial action; or it brings in parties necessary or desirable for the full determination of the controversies raised in the initial complaint or to resolve all disputes between the parties to the initial complaint.

Declaration. Statements of fact or opinion over a disputed fact or issue, and concerning a lawsuit or proceeding, sworn or attested to under penalty of perjury. A declaration is not normally notarized.

Dedication. The giving or devoting of land to public use by some action of the owner.

Deed. A transfer of title to, or an interest in, real property by a writing signed by a person with an interest in it.

Defendant. The person named in, and against whom, a complaint has been filed. (See Complaint.)

Directory. Procedural laws which are intended to be advisory in the conduct of a public entity's affairs. Laws are generally directory when they relate to internal operations of the entity. On the other hand, where third parties are affected by the law, the laws are mandatory and the entity must follow them.

Discovery. The ascertainment of facts and documents by a party to a lawsuit through the use of interrogatories, requests for production, and depositions, and similar devices provided for in state and federal codes of civil procedure. The phase in litigation to gather relevant evidence for a case. Such evidence may or may not be admissible as evidence at a hearing or at trial.

Discretionary. An act which requires exercise in judgment and choice as to what is just and proper under the circumstances. The opposite of a discretionary act is a "ministerial" act (defined below).

Eminent domain. The power of the government to take private property for public use. Private property cannot be taken except for fair compensation, and only under strict compliance with the letter of the law.

Fair argument. A determination under the California Environmental Quality Act ("CEQA") which, when made, requires that an Environmental Impact Report ("EIR") must be prepared before a project can proceed. An agency must consider the entire record and decide whether it can be fairly argued on the basis of substantial evidence in that record that the project may have a significant environmental impact on the environment. This process requires a weighing of the evidence on both sides of a question, and if substantial evidence of a significant environmental effect impact exists, evidence to the contrary does not dispense with the need for an EIR when it can still be fairly argued that the project may have an environmental impact. The mere expression of project opponents' fears and desires lacking any objective basis for a

challenge does not constitute substantial evidence supporting a fair argument. (See substantial evidence.)

Fee. Generally, the requirement for the payment of a monetary amount. Fees are generally imposed in exchange for a service or the processing of an application. Fees are of a broad range and when imposed are a legislative act. When imposed in connection with a land use development, they are subject to state law requirements concerning prior notice to the public, written justification, reasonableness of the amount, segregation and/or accounting, etc. Fees cannot exceed the estimated reasonable cost of providing the service for which they are charged, otherwise they are subject to challenge as a tax.

Findings. The determinations of fact supporting the approval or denial of a project; an explanation of how the City processed raw evidence to reach its decision. The subconclusions that expose the City's method of analyzing the facts and regulations, and of applying its policies. Findings are not generally required for legislative acts, unless required by statute or ordinance. Findings are usually required as to administrative (quasi-judicial) acts.

General law city. A municipal corporation existing under the general laws of the state, without a charter. A general law city is required to comply with all state laws.

Hearing. A proceeding with some degree of formality for the determination of issues of fact or law or both. Parties responding to it generally have a right to notice, to be heard at or prior to it, and to introduce evidence or argument or both.

Immunity, immunity from suit. Freedom from duty, penalty or obligation. The right to be free from suit for taking, or failing to take, certain action.

Implementation plan: A plan that the Agency must adopt every five years, and that identifies the methods and means by which the Agency intends to achieve its goals and objectives for the project area in the ensuing five years. It describes programs and expenditures and explains how the Agency will achieve its goals and objectives, eliminate blight, and achieve its housing objectives.

Interrogatories. A form of discovery. Written questions, from one party to a lawsuit to another party, which must be answered under oath, using due diligence in preparing the answers. Appropriate objections are permitted.

Inverse condemnation. A remedy for the breach of the constitutional requirement that property not be taken or damaged for public use unless just compensation has first been paid to the private property owner. Inverse is often described as the "reverse" side of eminent domain, as a procedural device for ensuring that the constitutional proscription is not violated. (See eminent domain, supra.) There are many theories which can support a claim of inverse condemnation, the most common being a zoning or land use regulation that denies a property owner all viable economic use of his or her property and physical damage to, or invasion of, property.

Legislative. Pertaining to the function of determining what the laws shall be, relating to subjects of permanent or general character. A legislative act refers to an act which applies generally. The opposite of a legislative act is a judicial act (in a municipal context called a "quasi-judicial" act). The distinction is important because it controls what kind of due process is required for the action, whether findings are required, and what kind of standard of review a court will apply to the action in reviewing it.

License. Authority granted to do or refrain from doing any act. The certificate itself which gives permission.

Lien. A charge or security or encumbrance upon property, usually evidencing a debt, obligation or duty.

Litigation Summary. A confidential written memorandum by the City Attorney to the Council in anticipation of a closed session under the Brown Act. Litigation Summaries are privileged because they contain either *attorney-client communications* or *work product*.

Low Income Person/Household has the meaning set forth at Cal. H. & S. C. § 50093.

Mandatory. An obligatory law which is required to be performed. A law is usually considered mandatory where its operation affects a third party. The opposite of mandatory is directory.

Ministerial. A governmental decision which does not require discretion but only the application of already established standards to given facts.

Minutes. A written summary record of all the proceedings of the City Council by the City Clerk.

Moderate Income Person/Household has the meaning set forth at Cal. H. & S. C. § 50093.

Motion. A formal proposal of a Councilmember at a Council meeting that the Council take action or not take action.

Move, moving an item. (See also, Motion.) The act of making a motion, or that a specific motion be acted upon.

Negligence. The failure to use ordinary or due care. The breach of a duty of care by acting, or failing to act, as would a reasonable person in the same or similar circumstances.

Nuisance. In the sense of code enforcement, a continuing or unabated violation of a code provision; in a broader legal sense, everything that endangers life or health, gives offense to the senses, violates the laws of decency, or obstructs reasonable and comfortable use of property.

Ordinance. The enactments of the legislative body of a municipality (Council) having the force and effect of law within its boundaries.

Plaintiff. A person filing a complaint seeking some relief provided under law.

Preemption, state preemption. The preemptive authority of the state. The supervening power of the state exercised by legislating on a subject or in a field with the intent to preclude municipalities from acting on the same subject where the state has preempted the field of regulation. State law supplants municipal ordinances.

Prima facie. When the evidence in favor of a claim or argument is sufficiently strong for his opponent to be called on to answer it and, if unrebutted, would entitle one to relief.

Privileged communications. Communications, whether oral or written, by or between persons (including the Council) which the law protects as confidential as to all other persons.

Proceeding. Any action, hearing, investigation, or inquiry (by a court, administrative agency, hearing officer, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be given.

Project area committee ("PAC") - A PAC is an organized group comprised of property owners, tenants, business owners, and representatives of community organizations, that reside within a redevelopment project area, and are elected by project area property owners, tenants, business owners, and community organizations. The Agency must consult with the PAC during and after plan adoption

Public purpose. Actions of a municipality whose objects promote the public health, safety, morals, general welfare, security, prosperity, and contentment of its residents and inhabitants.

Rezoning. Changing the zoning classification of property from one to another, affecting the types of uses and structures permitted on it.

Recess. A brief intermission within a meeting which does not end it or destroy its continuity as a single gathering, after which business is resumed.

Request for Production. A form of discovery. A written request to a party to a lawsuit by another party that documents falling within certain descriptions or categories be produced.

Resolution, minute resolution. An expression of opinion, a declaration of will or intent by the Council which can have the effect of law. It usually relates to matters of special and temporary character, while an ordinance prescribes a permanent rule of conduct or government. The document reflecting such action by the Council. Minute resolutions are the City Clerk's written notation of action taken by the legislative body.

Risk Manager. The position created by the Fresno Municipal Code to investigate, manage and compromise certain claims, claims adjustment and related functions of the City.

Statute. An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted by the legislature according to the forms necessary to constitute the law of the state.

Subpena. A process to cause a witness to appear and give testimony.

Subpena duces tecum. ("SDT"). A subpena which also requires the witness to bring documents or other things.

Substantial evidence. Enough relevant information and reasonable inferences from this information to support a finding or conclusion. Evidence is staff reports, written testimony and oral testimony. Substantial evidence may be present to support a conclusion even though other conclusions may be reached from the same evidence. Under federal and California case law, whether substantial evidence exists is determined by looking at the whole record, and, if the contrary evidence is sufficiently strong, then it can overcome other evidence which may be substantial but for the other evidence. The substantial evidence test is considered a deferential one for purposes of judicial review. One modification of the substantial evidence test is less deferential which applies to decisions to prepare a negative declaration instead of an environmental impact report (see, Fair Argument, supra). Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment, is not substantial evidence. Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion support by facts. Uncorroborated opinion or rumor is not substantial evidence.

Summons. The document advising a person that a legal proceeding has been filed against him and requiring a response within a prescribed period.

Supremacy. The highest level of authority of the sovereign; the paramount authority of the federal government to act in specified situations, to which state and local authority must yield.

Taking. When local government adopts regulations or takes action which amount to appropriating or denying to the owner all economic use of the property. The taking of action or regulations that deny a property owner all economically viable use of his or her property and physical damage to, or invasion of, property.

Tax. A pecuniary burden laid upon individuals or property to support the government, and is payment exacted by a legislative authority. There are many types of taxes which are distinguishable from use rates, assessments, fees, and charges for municipal services.

Tax Increment has the meaning set forth at Cal. H. & S. C. § 33334.2.

Text amendment. An ordinance adding, repealing or changing the text of the Fresno Municipal Code.

Tort. The violation of a duty created or imposed by the law giving rise to a right to damages.

Ultra vires. An act beyond the scope of the power of a municipal corporation, as defined by its charter, or the laws defining or proscribing its corporate powers.

Very Low Income Person/Household has the meaning set forth at Cal. H. & S. C. § 50105.

Waiver. An act intentionally waiving, relinquishing, or abandoning a known right, claim or privilege.

Waste, waste of public funds. An unreasonable, destructive or improper use of property, or mismanagement or omission of duty of the public funds by a public body or official.

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